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Mr. Japiski

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-198529 DATE: June 9, 1981

MATTER OF: Paul Arpin Van Lines, Inc.

DIGEST:

Carrier does not rebut prima facie case of liability for damage to television set where proof purportedly indicating that vacuum tubes must have been damaged after delivery is consistent with conclusion that damage occurred in transit.

Paul Arpin Van Lines, Inc. (Arpin) appeals a settlement of our Claims Group (Claims) which disallowed a claim for \$46.63 collected for damage to a television set shipped by Sgt. Vernell Qualls under GBL M-1867834. Claims determined that the evidence indicated that the property was tendered to the carrier in good condition, was received in a gouged, scratched and dented condition with two damaged vacuum tubes, and that damages amounted to \$46.63. In the circumstances, Claims concluded that a prima facie case of bailee negligence had been established in accord with the standards in Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1964), and that Arpin had not met its burden to show that loss or damage did not occur while the television set was in its custody or resulted from an excepted cause.

Arpin focuses its appeal on one point: the conclusion that Arpin had not met its burden of showing that the loss or damage did not occur while the set was in its possession. According to Arpin, at least part of the damage must have occurred after delivery, since reports prepared by the service company performing the repairs indicate that the owner's original complaint with the set was that the picture was wavy. Had the 6LB3 damper tube been broken as claimed, Arpin contends, there would have been no high voltage in the set and no picture at all.

[Appeal of Claim Settlement]

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However, Arpin's position is not supported by the evidence it cites. The reports prepared by the company performing the repairs indicate that Sgt. Qualls' complaint was that the set produced sound but no picture when he attempted to operate it after delivery. As a result, the 6DL3 damper tube was replaced. This action produced a distorted picture which was corrected by replacing the 6LB6 horizontal output tube. The reports indicate that such damage can result from mishandling while a set is moved, and that in this regard, the 6LB6 tube could have been damaged or weakened internally and the 6DL3 jarred from its socket and broken.

Since Arpin has not shown that the Claims' decision was in error, the settlement is affirmed.



Acting Comptroller General
of the United States